

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:)
)
EASTERN LIVESTOCK CO., LLC,) Case No. 10-93904-BHL-11
)
Debtor.)

**MOTION TO AMEND EIGHTH INTERIM AND FINAL APPLICATION OF
KROGER, GARDIS & REGAS, LLP FOR COMPENSATION AND REIMBURSEMENT
OF EXPENSES AS SPECIAL COUNSEL TO CHAPTER 11 TRUSTEE**

Kroger, Gardis & Regas, LLP ("KGR"), as special counsel to James A. Knauer, the Chapter 11 trustee appointed in this case ("Trustee") hereby files its Motion to Amend Eighth and Final Application ("Motion to Amend") for the allowance and payment of contingent fees not previously approved by this Court. In support of this Motion to Amend, KGR states as follows:

1. Petitioning creditors commenced the above-captioned Chapter 11 case ("Chapter 11 Case") against Debtor on December 6, 2010 ("Petition Date") by filing an involuntary petition for relief under Chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. ("Bankruptcy Code"). This Court entered its *Order For Relief In An Involuntary Case And Order To Complete Filing* on December 28, 2010 (ECF No. 110).

2. On December 27, 2010, the Court entered its *Order Approving The Appointment Of James A. Knauer As Chapter 11 Trustee* [Docket No. 102], approving the United States Trustee's *Notice Of Appointment And Application for Order Approving Appointment of Trustee* [Docket No. 98] pursuant to 11 U.S.C. § 1104.

3. On February 12, 2012, the Trustee filed his *Application to Employ Kroger, Gardis & Regas, LLP as Special Counsel to the Trustee*, and attached a proposed letter agreement ("Fee Letter Agreement") detailing fees under which KGR would serve as the Trustee's special counsel.

4. Following Notice, the Court entered its *Order Granting Application to Employ Kroger, Gardis & Regas, LLP as Special Counsel to the Trustee* on March 13, 2012, pursuant to the terms of the Fee Letter Agreement attached to the Application.

5. Following the entry of the Court's Order, KGR has acted as special counsel to the Trustee in the investigation of various claims on behalf of the Debtor's bankruptcy estate, and has pursued avoidance actions, promissory note collection cases, and foreclosure actions on behalf of the Trustee and the estate.

6. This Motion to Amend seeks approval and final allowance of certain contingent fees not previously sought or approved by this Court ("Additional Contingent Fees") and an order directing that the Additional Contingent Fees be paid by the Trustee.

7. The Fee Letter Agreement between the Trustee and KGR sets forth a fee arrangement whereby:

(a) KGR's attorneys would seek compensation at an hourly rate of \$175.00 per hour ("Hourly Fee") for the work performed on each individual matter;

(b) Additionally, in the event of a recovery, KGR would be entitled to seek compensation equal to the greater of the Hourly Fee amount or a

contingency fee of 25% of any and all recoveries for each separate matter in which KGR is employed ("Contingent Fee");

(c) The maximum recovery of KGR under the Contingent Fee arrangement as to any individual matter will be limited to 2 ½ times its standard hourly rates.

8. On November 6, 2017 [Docket No. 3002], KGR filed its Eighth Interim and Final Fee Application ("Final Fee App") as final compensation as special counsel for James A. Knauer, Trustee. The Final Fee App sought final compensation relating to the Holdback of 20% in the amount of \$183,693.50 and additional compensation for the period from August 1, 2016 through October 31, 2017 in the amount of \$14,730.00.

9. On November 29, 2017 [Docket No. 3012], the Court issued its Order granting the Final Fee App ("Final Fee App Order").

10. After approval of the Final Fee App Order KGR discovered errors in the calculation of the Contingent Fee in the *Third Interim Application of Kroger, Gardis & Regas, LLP for Compensation and Reimbursement of Expenses as Counsel for James A. Knauer, Chapter 11 Trustee* ("Third Fee App") [Docket No. 2400] and the *Fifth Interim Application of Kroger, Gardis & Regas, LLP for Compensation and Reimbursement of Expenses as Counsel for James A. Knauer, Chapter 11 Trustee* ("Fifth Fee App") [Docket No. 2667], which interim fee applications were approved by the Court on December 2, 2013 [Docket No. 2422] and December 3, 2014 [Docket No. 2684].

11. In the Third Fee App, KGR sought compensation for the Contingent Fee in the sum of \$73,756.26 whereas the sum of \$87,097.49 was authorized by the Fee Letter Agreement or a total additional contingent fee of \$13,341.23.

12. In the Third Fee App, KGR sought compensation for the Contingent Fee in the sum of \$13,935.00 whereas the sum of \$128,630.00 was authorized by the Fee Letter Agreement or a total additional contingent fee of \$114,695.00.

13. Attached hereto as Exhibits A and B, are spreadsheets demonstrating how the Additional Contingent Fees were calculated. KGR therefore seeks, Additional Contingent Fees in the amount of \$128,036.23.

THEREFORE, Kroger, Gardis & Regas, LLP requests (i) the Court award the amount of \$128,036.23 as an additional contingency fee; (ii) the Court issue an order directing that the Trustee to pay the additional contingency fee; and (ii) grant the Trustee all other just and proper relief.

Respectfully submitted,

KROGER, GARDIS & REGAS, LLP

/s/ Harley K. Means
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CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2017, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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I further certify that on December 11, 2017, a copy of the foregoing pleading was served via electronic mail transmission on the following:

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